

1 Rule 11-101. Supreme Court's rulemaking process.

2 Intent:

3 To establish a procedure for the adoption, modification and repeal of rules of
4 procedure and evidence, and rules governing the practice of law.

5 Applicability:

6 This rule shall apply to the Judiciary, the Utah State Bar, the Supreme Court's
7 Advisory Rules Committees, the Supreme Court's Board of Continuing Legal Education,
8 the Supreme Court's Ethics and Discipline Committee, and all other individuals and
9 entities participating in the rulemaking process.

10 Statement of the Rule:

11 (1) Statement of authority. Article VIII, Section 4 of the Utah Constitution provides
12 that the Supreme Court shall adopt rules of procedure and evidence to be used in the
13 courts of the state and shall by rule manage the appellate process. Section 4 further
14 provides that the Court may authorize retired justices and judges and judges pro
15 tempore to perform judicial duties. Finally, Section 4 provides that the Supreme Court
16 shall by rule govern the practice of law, including admission to practice law and the
17 conduct and discipline of persons admitted to practice law. To assist the Court with
18 these responsibilities, the Supreme Court hereby establishes a procedure for the
19 adoption, repeal and amendment of rules of procedure and evidence; rules regulating
20 judges pro tempore and retired judges; and rules governing the practice of law.

21 (2) Creation and composition of advisory rules committees.

22 (2)(A) Establishment of committees. There is hereby established a Supreme Court
23 advisory rules committee in each of the following areas: civil procedure, criminal
24 procedure, juvenile court procedure, appellate procedure, evidence, civil jury
25 instructions, criminal jury instructions, and the rules of professional conduct.

26 (2)(B) Composition of committees. The Supreme Court shall determine the size of
27 each committee based upon the workload of the individual committees. The committees
28 should be broadly representative of the legal community and should include practicing
29 lawyers, academicians, and judges. Members should possess expertise within the
30 committee's jurisdiction.

1 (2)(C) Application and recruitment of committee members. Vacancies on the
2 committees shall be announced in the Utah Bar Journal. The notice shall specify the
3 name of the committee which has the vacancy, a brief description of the committee's
4 responsibilities, the method for submitting an application or letter of interest and the
5 application deadline. Members of the committees or the Supreme Court may solicit
6 applications for membership on the committees. Applications and letters of interest shall
7 be submitted to the Supreme Court.

8 (2)(D) Appointment of committee members and chair. Upon expiration of the
9 application deadline, the Supreme Court shall review the applications and letters of
10 interest and appoint those individuals who are best suited to serve on the committee.
11 Members shall be appointed to serve staggered four-year terms. The Chief Justice shall
12 select a chair from among the committee's members. The chair shall be appointed to
13 serve a two-year term and may be appointed to serve additional two-year terms. Judges
14 who serve as members of the committees generally shall not be selected as chairs.

15 (2)(E) Vacancies. In the event of a vacancy on a committee due to death, incapacity,
16 resignation or removal, the Supreme Court, after consultation with the committee chair,
17 shall appoint a new committee member to serve for the remainder of the term to which
18 appointed.

19 (2)(F) Absences. In the event that a committee member fails to attend three
20 committee meetings during a calendar year, the chair shall notify the Supreme Court of
21 those absences and may request that the Supreme Court replace that committee
22 member.

23 (2)(G) Administrative assistance. The Administrative Office of the Courts shall
24 coordinate staff support to each committee, including the assistance of the Office of
25 General Counsel in research and drafting and the coordination of secretarial support
26 and publication activities.

27 (2)(H) Recording secretaries. A committee chair may appoint a third-year law
28 student, a member of the Bar in good standing, or a legal secretary to serve as a
29 recording secretary for the committee. The recording secretary, shall attend and take
30 minutes at committee meetings, provide research and drafting assistance to committee
31 members and perform other assignments as requested by the chair.

1 (3) Responsibility of advisory rules committees.

2 (3)(A) Petitions. Petitions for the adoption, repeal or amendment of a rule of
3 procedure, evidence, or professional conduct, or a jury instruction may be submitted by
4 any interested individual to the Utah Supreme Court. Petitions shall be in writing, shall
5 set forth the proposed rule, amendment, or instruction, or the text of the rule or
6 instruction proposed for repeal, and shall specify the need for and anticipated effect of
7 the proposal.

8 (3)(B) Committee agenda. The Supreme Court shall forward all submitted petitions
9 to the chair of the appropriate committee. All petitions shall be placed on the
10 committee's agenda for consideration and the committee shall provide written
11 notification of committee action to all individuals who file petitions.

12 (3)(C) Committee work. Committees shall meet as a whole, at the direction of the
13 chair, to discuss and vote upon individual and subcommittee recommendations and to
14 prepare written recommendations to the Supreme Court concerning petitions or
15 committee-initiated proposals. Minutes shall be taken at all meetings of the committee
16 of the whole and shall be forwarded to the Supreme Court's liaison for the committee.

17 (4) Public comment.

18 (4)(A) Submission of final rules recommendations. Each advisory rules committee
19 shall vote upon and finalize its recommendations and any proposed committee notes for
20 public comment and submit them to the Administrative Office of the Courts for
21 publication and distribution.

22 (4)(B) Publication. The Administrative Office of the Courts shall publish the final
23 committee recommendations and any proposed committee notes for a 45-day comment
24 period. The comment period will run from the expected publication date of the law
25 reporter service in which the rules will appear. The purpose of the comment period shall
26 be to solicit written or oral comment concerning the committees' recommendations and
27 to request input on the committees' agenda.

28 (4)(C) Distribution. Copies of proposed rules and any advisory committee notes shall
29 be distributed as provided in Rule 2-203.

30 (4)(D) Comment. The committees have the discretion to limit public comment to oral
31 or written comment. Written comment shall be submitted to the Administrative Office of

1 the Courts. Oral comment shall be scheduled for hearing at the convenience of the
2 committee during the 45-day comment period.

3 (4)(E) Committee review. Upon the expiration of the comment period, the
4 Administrative Office of the Courts shall compile all of the written comment received and
5 forward it to the appropriate committee chair. The chair shall convene a meeting of the
6 committee for the purpose of reviewing the public comment and discussing and voting
7 upon appropriate modifications to the rules.

8 (4)(F) Transmittal. Once the committee has reviewed the public comment and voted
9 upon the final modifications to the proposed rules and committee notes, it shall submit a
10 letter of transmittal to the Supreme Court with a copy of the committee's final proposals,
11 a summary of the public comment and the committee's recommendations in response
12 to the comment.

13 (5) Responsibility of Utah State Bar, or other entities, as to proposed amendments to
14 rules pertaining to the practice of law.

15 (5)(A) Petitions. Petitions for the adoption, repeal or amendment of rules or
16 procedures governing, affecting, or pertaining to the practice of law, other than the rules
17 of professional conduct, shall be filed with the Utah Supreme Court. Petitions shall set
18 forth the proposed rule or amendment or the text of the rule proposed for repeal and
19 shall specify the need for and anticipated effect of the proposal.

20 (5)(B) Publication. After preliminary review of the petition, the Supreme Court shall
21 submit the proposed rule or amendments to the Administrative Office of the Courts to be
22 published for a 45-day comment period.

23 (5)(C) Distribution. Distribution of the proposed rule or amendments shall be as
24 provided in Rule 2-203.

25 (5)(D) Supreme Court review. Upon the expiration of the comment period, the
26 Administrative Office of the Courts shall compile all of the written comment received and
27 forward it to the Supreme Court.

28 (5)(E) Petitioner's review. Following receipt of the written comment, the Supreme
29 Court shall submit a copy of the comments to the entity who filed the petition seeking
30 the rule change. Petitioner shall review the comments and vote upon final modification
31 to the rules or procedures. Once petitioner has completed its review and voted upon the

1 final modifications, it shall submit a memorandum to the Supreme Court containing the
2 petitioner's final proposals, a summary of the public comment, and the petitioner's
3 recommendations in response to the public comment.

4 (6) Responsibility of Supreme Court.

5 (6)(A) Court liaison. The Supreme Court shall designate a representative of the
6 Court to serve as a liaison to each advisory rules committee and to the Utah State Bar.

7 (6)(B) Advisory rules committee proposals. The Supreme Court shall consider
8 committee proposals and adopt, modify or reject those proposals. The Supreme Court
9 shall notify committee chairs and the Administrative Office of the Courts as to which
10 proposals were adopted, modified or rejected.

11 (6)(C) Petitions concerning rules or procedures pertaining to the practice of law. The
12 Supreme Court shall consider petitions and petitioners' memoranda and adopt, modify,
13 or reject the proposals made and enter an appropriate order.

14 (6)(D) Court-initiated rules. In its discretion, the Supreme Court may adopt rules of
15 procedure or evidence, rules regulating judges pro tempore and retired judges, rules
16 governing the practice of law or modify or repeal those rules upon its own initiative and
17 without proposals by the committees or the Utah State Bar. Court initiated rules shall be
18 published for a 45-day public comment period in accordance with Paragraph (3).

19 (6)(E) Effective date. Rules shall become effective 60 days after adoption by the
20 Supreme Court unless otherwise ordered.

21 (6)(F) ~~Emergency~~ Expedited rulemaking. Notwithstanding the other provisions
22 contained in these rules, if the Supreme Court determines by an affirmative vote of the
23 members of the Supreme Court that it is in the best interest of the judiciary to suspend
24 the rulemaking procedures, the Supreme Court may take final action on a committee or
25 Court-initiated proposal, approve the proposal and provide for an immediate effective
26 date. The Supreme Court shall transmit a copy of the approved rule or committee note
27 to each committee chair and the Administrative Office of the Courts. The Administrative
28 Office of the Courts shall publish the rule for a 45-day comment period and submit any
29 comments received during that period to the Supreme Court for consideration. The
30 Supreme Court may then ratify, amend or repeal the rule.

Effective: November 1, 2005

- 1 (6)(G) Publication. All rules adopted by the Supreme Court shall be published in the
- 2 official publication for Supreme Court Rules.